

Residential Tenancies Tribunal

Application 2024-1156-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 21-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he/she has been properly served. The landlord submitted two affidavits with his application stating that he had served the tenants with the notice of the hearing by email to [REDACTED] and via Facebook messenger and via text messages to [REDACTED] and [REDACTED] on 26-December-2024 (LL#1,2) and submitted proof of sent email and texts on that date (LL#3). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. There was a written fixed term rental agreement which commenced on 16-August-2024 till 16-August-2025. The tenants vacated the unit on 30-November-2024. Rent was \$700.00 per month due on 20th of each month. A security deposit of \$300.00 was collected in August-2024 and is still in landlord’s possession.
6. The landlord amended his application to decrease amount of rent from \$2100.00 as per application to \$930.00 and to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:

- Validity of termination notice;
- Rent paid \$930.00;
- Late fees \$25.00;
- Compensation for Damages \$1661.00;
- Other \$138.00;
- Hearing expenses \$20.00;
- Security Deposit of \$300.00 to be applied against any monies owed.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4 Deposits, Payments and Fees, Section 9-3 Compensation for Damages to Rental Premises, Section 12-1 Recovery of Costs, and following sections the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, Section 15: Fee for failure to pay rent.

Issue # 1: Validity of termination notice

Landlord's Position

10. The landlord stated that he received messages from neighbors and other tenants indicating the tenants have vacated the property. The rent was not paid on 20-November, and it triggered the landlord to issue an abandonment notice on 1-December-2024 to the tenants. The copy of the notice of abandonment was submitted by the landlord to support his claim (LL#4). The landlord stated that on 2-December tenant sent him an explanation that the tenants are moving out on 2-December and submitted screenshots of their communication (LL#5), however actual termination notice was received on 4-December under section 21 of the *Act – Notice where premises uninhabitable*. The landlord submitted a copy of termination notice (LL#6).
11. The landlord stated that on 4-December he entered the unit and discovered that the property showed signs of abandonment, such as spoiled food in the fridge with expiration dates from mid-October and mice feces throughout the property. The landlord submitted photographic evidence to show poor condition of the unit (LL#7).
12. The landlord testified that he ordered pest service to provide the inspection of the premises and they reported that the unit appeared to have been abandoned a long time ago, as the amount of droppings says they were there for a while. The landlord submitted a copy of the pest service report to support his claim (LL#8).
13. The landlord testified that he never received any concerns about the condition of the property prior to the termination notice and argued that the termination notice was backdated and issued by the tenants after he issued a notice of abandonment. The landlord believes that the evidence of abandonment from October contradicts the tenant's claim that they vacated in December what makes a termination notice invalid.

Analysis

14. I accept the landlord's testimony as the tenants were not present or represented during the hearing to provide their own testimony. Based on the landlord's testimony and screenshots of conversation between landlord and tenant 2, I accept that termination notice dated 2-December was received by the landlord on 4-December. The evidence provided by the landlord demonstrates that the tenants abandoned the unit, rendering the termination notice on 4-December backdated the termination to 2-December untimely and irrelevant. For those reasons I find that termination notice issued by the tenants is not valid.

Decision

15. The termination notice is not a valid termination notice.

Issue # 2: Rent paid \$930.00 Late fees \$25.00

Landlord's Position

16. The landlord testified that rent is outstanding in the amount of \$930.00 and stated that he is seeking late fees in the amount of \$25.00. The landlord stated that he did not receive November rent and is seeking rent payment for December 20-31, as the new tenants moved in on 1-January-2025. The landlord stated that he feels that the tenants are responsible for rent payments as their termination notice was invalid.

17. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

18. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

19. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

20. I accept the landlord's testimony that the rent was not paid in November and December, as the tenants were not present or represented during the hearing to provide their own testimony. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the late fee of \$25.00 is allowed. Payment for the December is calculated on a prorated basis. The daily rate of \$22.95 is applied and charged for the December 20-31. See amended ledger below:

Amended Rental Ledger 2024-1156-NL			
Date	Action	Amount	Total
October 20, 2024	balance	\$0.00	\$0.00
November 20, 2024	Rent due	\$700.00	\$700.00
December 20-31, 2024		\$252.45	\$952.45
Late fees		\$25.00	\$977.45
			\$977.45

Daily rate: \$700.00 x 12 mths = \$8400.00

\$8400.00/ 366 days = \$22.95 per day

21. While rent arrears and late fees are calculated to 977.45, the tribunal cannot award costs in excess of what is claimed, therefore the landlord is awarded \$955.00 for rent and late fees.

Decision

22. The landlord's claim for rent and late fees succeeds in the amount of \$955.00.

Issue # 3: Compensation for damages \$1661.00.

23. The landlord is seeking compensation for damages according to the damages ledger as follows:

1	4x4inch hole bottom of stairs	\$ 150.00
2	Orkin pest control service, infestation of mice due to	\$ 511.00
3	food items left on table for about 2 months, decaying	
4	pumpkin outside and nobody occupying the home.	
5		
6	Hazardous cleaning of mice feces, as well as removal	\$ 1,000.00
7	of mice infested household items like clothes, bed, baby	
8	toys and other miscellaneous items. Removal of	
9	outdated spoiled food items like milk, eggs, fruits, ham	
10	and other food stuffs outdated since late sept - mid oct	
11	General cleaning of the house, bathroom, bedrooms &	
12	appliances for basic move-out cleaning courtesy.	
13	TO BE QUOTED MY ESTIMATE IS \$1000	

#1: Hole at the bottom of stairs \$150.00

Landlord's Position:

24. The landlord is seeking \$150.00 for repairs to a hole at the bottom of the stairs. He stated that the hole, approximately four by four inches, was located on the bottom step on the left side in the wall. The repair required plastering and repainting, which the landlord completed himself. The landlord stated that the repair took him approximately one and a half hours but required multiple visits to the unit to allow the plaster to dry. The landlord stated that he used his own materials, including plaster and paint, which he estimated cost approximately \$15.00. The landlord testified that the damage occurred during the tenants' tenancy, possibly due to moving furniture. To support his claim, the landlord submitted photographs showing the condition of the unit prior to the tenancy. However, he explained that the photograph of the damage itself was lost when he sent it to the office.

#2: Pest control service \$511.00

Landlord's Position:

25. The landlord is seeking \$511.00 for pest control services. The landlord stated that the tenants abandoned the property and left conditions that attracted mice to the unit, as pumpkin was left outside on the deck, the lawn was not maintained by the tenants, the door sweeper was removed from the door and new one was never installed, and food was left on the table and throughout the unit. The landlord claimed that these factors collectively created an environment that encouraged mice infestation. To address the issue the landlord sought pest control services and submitted a quote to substantiate the claimed amount (LL#9). The landlord asserts that the tenant's actions and neglect were the direct cause of the mice infestation and, therefore holds them responsible for the cost of the pest control service.

#3: Hazardous cleaning \$1000.00

Landlord's Position:

26. The landlord stated that the tenants abandoned the unit in October, leaving it in poor condition with food left in the unit, what attracted mice. The landlord stated that entire unit needed to be cleaned because of mice infestation, including mice feces in every room. To support his claim, the landlord submitted photographs showing the state of the unit (LL#10). The landlord further stated that he contacted cleaning company to inquire about cleaning, but none were willing to clean the property due to the presence of mice feces. As a result, the landlord was forced to finish cleaning by himself. The landlord stated that himself and his mother spend four days, approximately eight hours each day cleaning the unit. The cleaning included deep cleaning of the bathroom, kitchen, fridge and all rooms to address the mice infestation and sorting all the personal belongings left by the tenants in the unit. The landlord is seeking \$1000.00 as reimbursement for cleaning.

Analysis

27. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

28. As the tenants were not present or represented during the hearing to provide their own testimony regarding these issues, the damages will be analyzed as follows:

#1: Hole at the bottom of stairs \$150.00

29. I accept the landlord's testimony as evidence, given that the tenants did not attend the hearing to dispute the claim. The landlord provided a reasonable explanation that the damage occurred during the tenancy and the steps he took to complete the repair. Under the *Residential Tenancies Policy*, self-labor for repairs is compensated at \$23.60 per hour. I accept that the landlord spent 1.5 hours addressing the damage and find the time requested and the amount for materials of \$15.00 to be reasonable.

Therefore, I find that the landlord should be awarded \$50.40 for the repair of the hole at the bottom of the stairs.

#2: Pest control service \$511.00

30. I accept the landlord's evidence that the conditions of the unit left by the tenants contributed to the mice infestation, as the pumpkin left on the deck, unmaintained lawn, removal of the door sweeper and food left in the unit are all reasonable factors that could attract mice. The landlord provided a quote from pest control company and given the evidence and circumstances described, I find that the tenants are responsible for the conditions leading to the mice infestation, consequently, for the cost of the pest control service.

The landlord's claim for pest control services succeeds.

#3: Hazardous cleaning \$1000.00

31. I accept landlord's testimony that the tenants did not clean the unit after vacating. I find that the landlord provided sufficient evidence to show the condition of the unit after tenants vacated and that the cleaning was necessary. I accept that the landlord and his mother spent significant time addressing the condition of the unit. In accordance with the Section 9-3 of the *Policy*, if the landlord carried out any of the repair work themselves, they may claim for costs of personal labor the current provincial minimum wage rate plus \$8.00. After reviewing the costs claimed by the landlord, that would equate to 64 hours at 23.60 equaling \$1510.40. However, the tribunal cannot award costs in excess of what is claimed, therefore the landlord is awarded \$1000.00 for cleaning.

Decision

32. The landlord's claim for damages succeeds in the amount of \$1561.40.

Issue # 4: Other expenses \$138.00

Landlord's Position:

33. The landlord explained that the tenants requested the replacement of few window screens along with door weather sweeper, as they were in bad condition or missing. The landlord stated that they agreed that the tenant would purchase the materials, and the landlord would deduct the cost from the rent based on the receipt, adding \$20.00 for the tenant's assistance. The landlord submitted evidence, including screenshots of their conversation and the receipt for the materials to support his claim (LL#11). He further stated that the tenant paid \$540.00 in rent instead of \$700.00, as per their agreement.

The landlord reported that when he entered the unit in December, he discovered that the door sweeper and the screens were not replaced by the tenant. For those reason the landlord is seeking the reimbursement of \$138.00.

Analysis

34. I accept the landlord's testimony and as he provided sufficient evidence of the agreement between him and the tenant and photographic evidence that demonstrated that the work was not completed, I find that the landlord is entitled to reimbursement of these expenses.

Decision

35. The landlord's claim for other expenses of \$138.00 succeeds.

Issue # 6: Hearing expenses \$20.00

Analysis

36. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

37. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 7: Security deposit to be applied against any monies owed \$300.00

Analysis

38. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

39. The landlord's claim for losses has been successful as per paragraphs 18, 23, 28, 31 and 33 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2024-2025 is 1%.

Decision

40. Security deposit plus interest to be applied against monies owed succeeds.

Summary of Decision

41. The termination notice is not a valid termination notice.
42. The tenants shall pay the landlord \$2373.09 as follows:

Rent and late fees	\$955.00
Compensation for damages	\$1561.40
Other expenses	\$138.00
Hearing expenses	\$20.00
Less Security Deposit & interest	\$301.31
 Total	 \$2373.09

January 27, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office